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COURT OF APPEL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

E.V.,

Petitioner,

v.

IMPERIAL COUNTY SUPERIOR
COURT,

Respondent;

IMPERIAL COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Real Party In Interest.

D075607

(Super. Ct. Nos. JJP3789,
JJP3790, JJP3791)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. William D. Lehman, Judge. Petition denied.

Thomas W. Storey for Petitioner E.V.

No appearance by Respondent.

Kelly Ranasinghe, Henderson and Ranasinghe LLP, for Real Party in Interest.

E.V. seeks review of a juvenile court order terminating reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing for her minor children Er.R., El.R., and M.R. E.V. contends insufficient evidence supports the juvenile court's decision to terminate reunification services under section 361.5. We reject the petitioner's argument and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

At the time the current dependency proceeding was initiated, E.V. was the mother of seven children ranging in ages from one month to 13 years old. Prior to this case, the family had a long history of involvement with the Imperial County Department of Social Services (Department) that included frequent reports of domestic violence between E.V. and the father of E.V.'s four youngest children, J.S., serious neglect of the minors, and a positive drug test of one of the youngest children.² The family had received voluntary services from the Department in the past and had been subject to a safety plan a year before this proceeding.

On April 27, 2017, the Department's hotline received a report of suspected child abuse concerning the family. The reporting party stated that 13 children were living in a residence that was in unsanitary condition and that the children did not have enough food to eat. The day of the report, a Department social worker, Alfonzo Ruiz, visited the three oldest minors, A.R., Er.R., El.R., at school. The minors told Ruiz they did not have

¹ All subsequent statutory references are to the Welfare and Institutions Code.

² E.V.'s three oldest children each have separate fathers who did not participate in the dependency proceeding and who are not relevant to this appeal.

enough food in their home and were often hungry. E.V.'s oldest son, A.R., also reported that there were cockroaches in the home where they lived. All of the minors reported witnessing domestic violence between E.V. and J.S.

Ruiz visited the family's home later that day, but E.V. and J.S. did not let the social worker inside the apartment. E.V. and J.S. told Ruiz they were leaving to take the minors to their childcare provider and then to their jobs harvesting onions on a nearby farm. Ruiz told the family he would return the following day to inspect the home. When Ruiz returned, he found the home in deplorable condition. His report detailed an infestation of cockroaches, dirty diapers on the floor, wads of hair stuffed into the wall, and no toothbrushes for any of the minors. Ruiz reported there was a lack of food in the home for the 17 people living there and found only a small amount of formula for E.V.'s infant son. Ruiz also noticed that the couple's three-year-old son had a severe rash and scabs on different parts of his head. The family did not have car seats for the younger children.

E.V. and J.S. explained they were temporarily living in the apartment with E.V.'s sister, her husband, and their children because the electricity to the trailer they had lived in was cut off and their landlord had removed the air conditioning unit and propane tanks used for their stove. Ruiz asked E.V. and J.S. if they would be willing to submit to drug testing. They initially agreed, but quickly changed their minds. The Department determined the children should be placed in protective custody and took them to the El Centro Regional Center to be medically evaluated. Several of the minors were found to have lice and ringworm.

In interviews with social workers once in protective custody, A.R., Er.R., and El.R. reported that they witnessed the uncle they were living with smoke methamphetamine and threaten their aunt with a knife. El.R. reported that J.S. drank excessively and abused her younger brother. In their interviews, E.V. and J.S. denied they used any illegal drugs. E.V. denied any history of drug use and J.S. told the social worker he had used methamphetamine in the past, but had been sober for two years.

After a detention hearing on May 4 and 5, 2017, the juvenile court detained the minors, finding the Department had made a prima facie case that there was a substantial risk of danger to the minors' physical health and no reasonable means to protect them without removal. The minors were eventually placed in three separate foster homes. E.V. and J.S. submitted to hair strand and urinalysis drug testing in early May. E.V.'s hair strand tested positive for methamphetamine, and both parents had negative results on their urinalysis. When they were retested in June, E.V.'s tests were negative, but J.S. tested positive for methamphetamine.

An initial jurisdiction and disposition hearing was set for May 24, 2017, then continued and eventually a contested hearing was scheduled for June 26, 2017. Before the hearings, J.S. admitted to the family's social worker he had recently used methamphetamine because it helped him get through his work day in the fields. J.S. also admitted that he had engaged in domestic violence with E.V., that he drank heavily, and E.V. and the minors had told him that his drinking was a problem. E.V. continued to deny any drug use. Although she initially denied domestic violence, after several social workers saw tense interactions between the couple and an incident in which J.S. slapped

E.V. in the face, E.V. admitted that she had been abused by and fought with J.S. in the presence of the minors. She also told the family's social worker that J.S.'s anger escalated when he was drinking, and when the children were not present.

In the Department's report for the jurisdiction and disposition hearing, the social worker stated that E.V. was willing to comply with her case plan, loved her children, and wanted to be reunited with them. E.V. and J.S. visited the minors regularly and were appropriate during visitation. The report recommended the continued detention of the minors in their foster placements, reunification services for E.V. and J.S., and continued supervised visitation for both parents.

At the hearing on June 26, 2017, the parties indicated they reached an agreement to return custody of the minors to E.V. if (1) J.S. did not live with E.V. and (2) the parties began participation in domestic violence classes. The agreement also called for a stay away order against J.S. preventing him from contact with E.V. and the minors. At the close of the hearing, the court entered an order removing custody from E.V. and J.S. under section 361, subdivision (c) declaring the minors dependents of the court, and requiring the parents to participate in the agreed case management plan. The court also increased J.S.'s supervised visitation with the minors from once to twice per week. The court's order allowed the minors to be returned to E.V.'s care once the Department verified that J.S. was not living with the family. The court set the matter for a six-month review hearing the following December.

Shortly after the hearing, the minors were placed with E.V. and the Department instituted family maintenance services. In late August, however, a social worker visiting

the family found that J.S. was staying with E.V. in violation of the court's order. Shortly after, E.V. called the police to the home and she was taken to the hospital with injuries sustained in a domestic violence incident with J.S. The four oldest children reported that J.S. was living with the family, that the couple argued all the time, and they feared that J.S. would hurt their mother. As a result, the Department again removed the minors and placed them back into foster care, this time split between two foster families—A.R., Er.R., El.R., and M.R. in one home and the three younger minors in the other. The Department filed a petition under section 387 and, at the detention hearing on September 11, 2017, the court again found the Department had made a prima facie case for removal and set a jurisdiction and disposition hearing on the Department's petition for October 25, 2017.

Before the hearing, J.S. told the social worker that he and E.V. were a couple, and that E.V. needed him to support her and the minors. J.S. blamed the minors' aunt and uncle for the dependency proceeding. E.V. did not contest J.S.'s description of their relationship, and told the social worker she had not been ready to care for the minors when they were returned to her in June. The Department's report for the hearing recommended continued placement with the foster parents, reunification services for both parents, including an outpatient drug rehabilitation program for J.S., and ongoing supervised visitation between the siblings and E.V. and J.S. At the hearing, the court adopted the Department's recommendations and set a six-month review hearing for April 25, 2018.

In its report for the review hearing, the Department stated that neither E.V. nor J.S. had complied with their case management plans. They continued to live together, and J.S. had been arrested for public intoxication in November. E.V. also gave birth to another daughter with J.S. in January. Thereafter, E.V. and J.S. began participating in reunification services, but they did not have stable housing and were living together with J.S.'s father. In early April, the social worker learned that E.V. and J.S. both had outstanding arrest warrants. J.S. also tested positive for methamphetamine. On April 11, 2018, E.V. informed the social worker that J.S. had been arrested and was incarcerated.

During the review period, the minors were doing well in their placements, with the exception of an incident involving El.R. El.R., who was 10 years old at the time, was placed on a psychiatric hold in December after lashing out against her foster sister and stating that she wanted to hurt herself. After five days at the Betty Jo McNeece Receiving Home, El.R. returned to the care of her foster parents. Both the foster family caring for A.R., Er.R., El.R., and M.R. and the family caring for the three younger minors expressed interest in legal guardianship if reunification efforts failed.

In the spring of 2018, the older children began expressing a desire to limit their relationship with E.V. In an interview with the family's social worker, six-year-old M.R. stated she did not want to attend visitation with her parents or be reunited with them. Rather, M.R. wanted to continue to live with her foster family because "she has fun, she is able to play, there is always food in the home and [her foster parents] do not fight." Er.R. (then age 11) and El.R. also told the family's social worker that they did not want to live with E.V. and J.S. and wanted to stay with their foster parents. El.R. told the social

worker she loved E.V. and wanted to maintain a relationship with her, but she did not want to live with E.V.

Visitation during the review period was sporadic, with the older minors frequently wanting to avoid visits with E.V. and J.S. The social worker's assessment was that the parents were not progressing in their reunification efforts. J.S. had a severe alcohol and drug abuse problem that exacerbated domestic violence with E.V., and E.V. was unwilling to admit that J.S. posed a danger to her and the minors. The Department's report for the hearing recommended that reunification services be terminated and that the court set a permanency planning hearing under section 366.26. E.V. and J.S. contested the recommendation and, at the initial review hearing in April, the matter was set for a contested hearing on May 21, 2018. After a lengthy hearing that included witness testimony by E.V., J.S., and three of the Department's social workers, the juvenile court issued its findings and order providing E.V. and J.S. with an additional six months of reunification services.

The court noted that E.V. and J.S. had participated in services until late 2017, but the record was unclear about their participation and the Department's expectations for their participation thereafter. The court found that neither parent had demonstrated an understanding of the issues that had brought the family into the protective system. The court also noted that J.S. was hostile to the Department, in denial about his own protective issues, and resistant to the services provided. The court found, however, that there was a substantial probability that E.V. would reunify with the minors within another six months. The court was less optimistic of J.S.'s ability to reunify, but provided him

with an additional six months of services, including completion of an inpatient drug rehabilitation program.

Shortly after the hearing, six-year-old M.R. told the family's social worker that she had been sexually abused by A.R. A.R. admitted to touching M.R. inappropriately on multiple occasions, and several months later A.R. disclosed that he had been the victim of sexual abuse by J.S.'s oldest son. After the discovery of the sexual abuse, A.R. was removed from the foster home and placed in a group home. Both A.R. and M.R. were referred for counseling as a result of the abuse allegation.

In the months after the hearing, E.V. participated in reunification services and moved into a shelter. All of the children were doing well in their placements, and all four older minors were in counseling to address the abuse that occurred in their foster home. E.V. visited regularly with the younger minors and attempted to visit with the older children. M.R., Er.R. and El.R., however, did not want to see E.V. and often refused to attend visits or made up excuses not to go. When they did attend, the visits were difficult and E.V. was angry with them for not wanting to see her. As the next review hearing approached, the family's social worker interviewed the older children about returning to E.V.'s care. Er.R., El.R., and M.R. were adamant that they did not want to live with E.V. and did not believe that her relationship with J.S. was over. They feared being subjected to domestic violence and food insecurity again.

By September 2018, E.V. had secured a two-bedroom apartment where she was living with her youngest child. The Department approved the home for visits with all of the minors (though A.R. and M.R. were not permitted to have joint visitation). Er.R.,

El.R., and M.R., however, continued to refuse visitation with E.V. and did not want to be placed in her care. The minors remained convinced that E.V. would remain with J.S. and that she had continued to have a relationship with him despite telling the Department they were no longer together. El.R. reported to the social worker that she had seen pictures of E.V. with J.S. in E.V.'s e-mail account suggesting E.V. was still with J.S. For his part, J.S. had stopped participating in services and had not visited the minors since June 2018.

In its report for the review hearing, the Department recommended an additional six months of reunification services for E.V., with the discretion to return the minors (with the exception of A.R.) to her custody under a family maintenance plan. J.S. contested the recommendation and the matter was set for trial on November 19, 2018.

After several continuances, the trial finally took place on February 4, 2019. By that time, the three youngest minors had reunified with E.V. and the Department recommended continued family maintenance services for them. Er.R., El.R., and M.R., however, continued to express their desire not to reunite with E.V., and the Department recommended termination of services and that the court set a permanency planning hearing under section 366.26.

By the time of trial, E.V. had been under a plan of reunification for just under 18 months. At trial, the juvenile court heard the testimony of the family's social worker, Er.R. and El.R., and admitted the Department's reports into evidence. In emotional testimony, the minors expressed their desire to stay in their foster home and not be placed with E.V. They both worried E.V. would continue her relationship with J.S. and that they would face hunger and violence in her care. Er.R. testified that he worried he would no

longer have support with his schoolwork. After the hearing, the court took the matter under submission and invited counsel to provide guidance on the appropriateness of returning the minors to E.V.'s care over their objection. The court also set a further hearing date for argument on the issue.

Before the hearing, the Department submitted a brief in support of its recommendation to terminate reunification efforts with respect to Er.R., El.R., and M.R. Minors' counsel submitted a brief requesting the court "order the Department to have the older three children see a behavioral health specialist or a private therapist to establish and evaluate the reasons why the children do not want to return to the custody of their mother." The brief further requested a continuance "for a period of time to see whether the children's concerns can be alleviated, through whatever means the therapist may deem appropriate."

On February 13, 2019, the parties returned to court for additional argument. E.V. asked for the older minors to be returned to her care. Minors' counsel repeated his request for additional time for therapy to help Er.R., El.R., and M.R. resume a relationship with E.V. The Department's counsel advocated for terminating reunification efforts for these minors so the case could move forward. At the conclusion of the hearing, the juvenile court found Er.R., El.R., and M.R. had suffered more trauma than the younger children, and the Department had shown that it would be detrimental to return them to E.V.'s care. The court terminated reunification services, ordered family maintenance services for E.V. for six months, and set a permanency planning hearing on June 5, 2019, for A.R., Er.R., El.R., and M.R.

E.V. petitioned for review of the juvenile court's order. (Cal. Rules of Court, rule 8.452.) This court issued an order to show cause. The Department responded to E.V.'s petition, but the minors did not. The parties waived oral argument.

DISCUSSION

E.V. states that the juvenile court did not return Er.R, El.R., and M.R. to her care "simply because the children did not want to go home" with her. She contends the juvenile court erred by finding that reasonable reunification services were provided to her because the Department did not provide her "with a location . . . away from []J.S. and as a result[], J.S. abused the stay away order . . ." These arguments are not well-taken.

I

"The purpose of the California dependency system is to protect children from harm and to preserve families when safe for the child. (§ 300.2; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. (§§ 366.21, 366.22; [citation].)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 (*Tracy J.*)). Reasonable reunification services during the reunification period are statutorily required, though there is "no constitutional 'entitlement' to these services." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 475.)

Family reunification services are also subject to strict time limitations. "[T]o prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate.

[Citations.] To avoid unnecessary delays in the process the Legislature has directed the juvenile court to 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' (§ 352, subd. (a).)" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) "Under the current dependency scheme, except in limited circumstances, a parent is entitled to 12 months of reunification services, with a possibility of 6 additional months, when a child is removed from a parent's custody. (§ 361.5.) The juvenile court must review the case at least once every six months. (§ 366.)" (*Ibid.*)

" 'At each review hearing, if the child is not returned to the custody of his or her parent, the juvenile court is required to determine whether reasonable services . . . designed to aid the parent in overcoming the problems that led to the initial removal and the continued custody of the child have been offered or provided to the parent . . . (§ 366.21, subds. (e), (f).)' " (*In re J.P.* (2014) 229 Cal.App.4th 108, 121.) Only in rare circumstances may the juvenile court continue the 18-month review hearing or order additional reunification services—for example, if the parents have been completely denied adequate reunification services. (See *Tracy J.*, *supra*, 202 Cal.App.4th at pp. 1426-1428 [agency provided mother no services to address her physical disabilities and child's asthma, unnecessarily limited visitation, and did not inform parents of child's medical appointments]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1000, 1017 [no reasonable services ever provided to father incarcerated all but one month of reunification period].)

If reasonable services have been provided, "section 366.22, subdivision (a) requires the juvenile court at the 18-month review hearing to return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*)). It is the Agency's burden to establish detriment. (§ 366.22, subd. (a); *Yvonne W.* at p. 1400.) "The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' " (*Yvonne W.*, at p. 1400, quoting *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.) "Rather, the risk of detriment must be substantial, such that returning a child to parental custody represents some danger to the child's physical or emotional well-being." (*Ibid.*)

"In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. (§ 366.22, subd. (a); *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. (§ 366.22, subd. (a); *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141–1142.)" (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1400.)

II

As noted, E.V. challenges the juvenile court's finding she was offered reasonable reunification services. We review a reasonable services finding for substantial evidence

(*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762), bearing in mind the clear and convincing evidence burden of proof. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971 (*Alvin R.*)) "In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 (*Misako R.*))

In its determination, the juvenile court considers the appropriateness of services offered, the extent to which the agency facilitated utilization of those services, and the extent to which the parent availed him or herself of the services provided. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*Misako R., supra*, 2 Cal.App.4th at p. 547.) Reunification services "should be tailored to the particular needs of the family." (*Tracy J., supra*, 202 Cal.App.4th at p. 1425.) The adequacy of the plan and the Agency's efforts must be judged according to the circumstances of the particular case. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1451.) However, reunification services are voluntary and cannot be forced on an unwilling parent. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233.)

We do not find merit in E.V.'s assertion that the reunification services offered to her were insufficient because the Department did not provide her with housing away from J.S. At the time of the review hearing, the record shows that E.V. had stable housing of her own and the Department had approved her apartment for placement of all

of the minors. Further, the Department advocated for a stay-away order that was put in place at the outset of the proceeding, and consistently encouraged E.V. to seek a domestic violence restraining order against J.S., which she repeatedly refused to obtain. The Department made frequent efforts to help E.V. terminate her relationship with J.S.; it could not force E.V. to take any additional action unwillingly.³ Given these circumstances, sufficient evidence supported a finding that the services provided to E.V. with respect to her living situation were reasonable.

Although it is not clear from her brief, to the extent that E.V. is asserting the juvenile court's detriment finding was supported by insufficient evidence, we also reject this claim. As noted, E.V. asserts that Er.R., El.R., and M.R. "were not returned simply because the children did not want to go home with" E.V. This is a mischaracterization of the record.

As the trial court found, the minors' fears about returning to E.V.'s care were well-founded. All three minors believed that E.V. would remain in a relationship with J.S. and that they would again be subjected to domestic violence. The record showed that for the majority of the dependency proceeding, E.V. denied any domestic violence occurred and she had only recently disavowed her relationship with J.S. at the time of the final review hearing. The minors also expressed fear they would witness other violence and drug use, and that they would again face food insecurity. Er.R. and El.R. provided direct testimony

³ The single legal citation in E.V.'s brief is to *In re G.S.R.* (2008) 159 Cal.App.4th 1202. This case involved the violation of the rights of a nonoffending parent and is not relevant to the issues presented here. (*Id.* at pp. 1213-1215.)

on these facts at the trial, and M.R. made similar statements to the family's social worker. The wishes of the children, their testimony concerning their living experiences with E.V. and J.S., and the Department's social worker's assessment that returning the minors to E.V.'s care would be detrimental to them sufficiently supported the juvenile court's finding of detriment. (*Alvin R.*, *supra*, 108 Cal.App.4th at pp. 974-975; *In re Joseph B.* (1996) 42 Cal.App.4th 890, 901-902.)

DISPOSITION

The petition is denied.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

GUERRERO, J.